

BOARD OF ZONING APPEALS

Minutes

September 23, 2003

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on September 23, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, ERMA MARKHAM, JOHN ROGERS, JAMES SKELTON,
BICKLEY FOSTER, DWIGHT GREENLEE. RANDY PHILLIPS in at 1:36 p.m.

DOUG MOSHIER -- Law Department present.

HERB SHANER, and J.R. COX -- Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER, Secretary.

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, August 26, 2003 BZA meeting minutes.

FOSTER moves, MARKHAM seconds to approve August 26, 2003 BZA meeting minutes.

Motion Carries 6-0.

RUANE Item #2, Case No., BZA2003-40, request variances for a ground-mounted sign to increase the height from 25 feet to 42 feet, to eliminate the requirement that a corner sign be angled to face both streets, and to exempt sign from the requirement that both faces of the sign be no more than 3 feet apart on property zoned "GC" General Commercial, Applicant, Conway Bank, Agent, Ferris Consulting, %Greg Ferris, general location, at the southeast corner of Kellogg and Main.

KNEBEL As you mentioned, the BZA held a hearing on this request last meeting, and the Board determined a general consensus on most of the items. The primary issue the Board was struggling with, at the last meeting was the height of the sign to be granted. The Board directed the staff to prepare a set of findings based on the last hearing, and the evidence that was presented at that hearing that were changed from the findings that were presented.

In the original staff report, to address the issue of the variances requested regarding the angling of the sign to face only Kellogg as opposed to both Kellogg and Main, the original Secretary's Report did not contain findings that supported that particular variance, and the resolution that you have in front of you today has been changed, based on the presentations of the last meeting, to reflect those findings. The recommendation, or the action that is included in this resolution, would be for the granting of the variances requested, regarding the angling of the sign, both the separation of the sign faces and the angling towards the street right-of-way, and then having the sign height be at 35 feet, is the way that it is written, and then you have received a letter from the applicant that they are agreeable with everything in the resolution as presented, except for the sign height, and they have requested an amended request for 39 feet as opposed to the 42 that was originally requested.

FOSTER What would be the lowest point that the logo and the name of the bank would show in relationship to the highway barrier there? Would 35 feet do it or would it take more than that?

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KNEBEL In my opinion, I think the height at 35 feet you would be able to see the sign. As far as the lowest height that you could see the sign, I don't know that I have the answer to that question. Probably something lower than 35 feet, because the sign is not immediately adjacent to the barrier, but is separated by a two lane roadway, and so you would be able to see something lower than the barrier height because of the distance separation, but what that height is I don't know exactly.

FOSTER Would the 35 feet enable the reader board to be seen or not seen from the highway?

KNEBEL I would suspect you probably could see it somewhat, whether it was an obstructed view or not I don't know without doing some sort of scientific line of sight analysis and requiring the applicant to submit that documentation. I don't think that the staff has the expertise to answer that question.

FOSTER But the name of the bank and their logo could be clearly seen from the highway?

KNEBEL That is my opinion from driving it, and looking at other signs of similar heights. There is a LaQunita sign that is just down the street, just a half a block, that is 25 feet in height that you can see over the barrier, and it is the same distance away from the barrier that this proposed sign would be.

GREG FERRIS, agent, We do agree with all the information, except the variance between 35 versus 39 feet. Originally we asked for 42 feet, the Board seemed a little bit questioning of that, so we went back through the analysis Scott was talking about, and came up with what we believe was the lowest possible sign that could be seen.

One of the important points to understand is that this is zoned General Commercial, and in General Commercial the reader board is just part of the sign. It is not for any group to differentiate to whether it is reader board, or sign, or if we put the reader board on top, or the sign on the bottom, it is all sign. What we have asked is that the entire sign be visible. We have lowered our request 3 feet. Our sign will be lower than the sign that you granted just about 350 feet away from us on the hotel to the west. What we are asking for is consistency with what this Board has already found as an appropriate height along the interstate.

If this was an off-site sign, we would not have this issue there. There would be some mechanism through the ordinances to that. If there is something the City does, like construct an overpass, that signs will be allowed to be similar to an off-site sign. So in the very near future, the ordinances are going to be changed, or at least recommended for change by staff, that is my understanding. So, I don't think there is anything here that is inconsistent with the City ordinances, or the action the Board has already taken in the past. We request that you approve the change of the Resolution from 35 feet to 39 feet.

FOSTER At 35 feet height, can you see the name and the logo from that height?

FERRIS You can see the Conway Bank and the logo at 35 feet.

SKELTON At 39 feet, the sign itself would be right at grade of the rail, or lower?

FERRIS It would be slightly lower.

RUANE At 39 feet, are you speaking of the bottom of the sign or the top of the sign that will be at grade?

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FERRIS The bottom of the sign, slightly lower than the guard rail.

FOSTER I think this is a distraction for traffic, and a unnecessary distraction.

FOSTER MOVES RUANE SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT.

PHILLIPS You are saying, approve at 35 feet?

FOSTER Yes, at 35 feet.

RUANE Allow the variance in sign height to 35 feet?

FOSTER Yes.

MARKHAM I feel that if I quickly want to see something, and I miss it then, it would bother me. I feel if it is there, and they can't see the sign, then it is going to be more of a distraction.

SKELTON I feel the 39 feet is reasonable.

RUANE We are struggling with this because of the elevation of the roadbed. There are not precise guidelines in the Sign Code. I support the 35 feet height.

ROGERS I agree that 39 feet is okay.

MARKHAM If you are coming east on that side, and all the signs are facing one way, you will only be able to see the signs at a particular angle. If the rail is covering part of the sign, then I think the entire sign should be read.

PHILLIPS I don't have a problem with the 39 feet. There are two restaurants there that have taller signs. I would want it to be clearly legible for motorist to see, and not be having to take a second look.

FOSTER No, I don't think we need the reader board that high.

PHILLIPS MOVES SKELTON SECONDS SUBSTITUTE MOTION THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT EXCEPT TO SUBSTITUTE THE 35 FEET WITH 39 FEET AS REQUESTED BY THE APPLICANT.

MOTION CARRIES 5-2. (Foster and Ruane, opposed), and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00040

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WHEREAS, Conway Bank c/o Chris Anderson, (owner/applicant), Ferris Consulting, c/o Greg Ferris, (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests 1) Variance to Section 24.04.221.3 of the Sign Code to increase the maximum permitted height of a pole sign from 25 feet to 39 feet; 2) Variance to Section 24.04.221(m) of the Sign Code to increase the maximum three foot distance allowed between the two faces of a sign that triggers the requirement to count both sides of the same sign as two signs instead of a single sign; and 3) Variance to Section 24.04.221.1 to allow a corner sign to face a single street frontage instead of being angled to face both street frontages on property zoned “GC” General Commercial and “B” Multi-family Residential and legally described as follows:

Lots 1 and 2, Flaming Steer Addition, Wichita, Sedgwick County, Kansas and Lot 27 and the north 9 feet of Lot 29, Dieters Addition, Wichita Sedgwick County, Kansas. Generally located at the southeast corner of Kellogg and Main.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meetings of August 26, 2003 and September 23, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variances arise from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is located adjacent to an elevated segment of a freeway overpass and signage of the height permitted by the Sign Code would not sufficiently relay the location of the business on the subject property to traffic along Kellogg. Additionally, since Main Street is one-way south-bound at the subject property and the sign would be blocked from view by south-bound traffic by the freeway overpass, the property is uniquely situated such that an angle sign at the corner would hinder rather than improve visibility of the sign.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variances will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variances will not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are zoned for commercial uses and the conditions of the variances will ensure that signage on the subject property is of a similar scale as permitted for adjoining businesses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the lack of visibility of the property was created by the construction of the freeway overpass and designation of the Main Street as a one way street that blocks the view of the applicant’s property.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the variances would not adversely affect the public interest, inasmuch as the conditions of the variances will ensure that signage on the subject property is tasteful in design, is of an appropriate scale, and has minimal lighting.

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WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variances would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for an increase in sign height, to angle to the sign towards the direction of traffic, and to face the sign only towards Kellogg in order to provide visibility from the freeway will provide a reasonable balance with the visual qualities of the community.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that 1) a variance to Section 24.04.221.3 of the Sign Code to increase the maximum permitted height of a pole sign from 25 feet to 39 feet; 2) a variance to Section 24.04.221(m) of the Sign Code to increase the maximum three foot distance allowed between the two faces of a sign that triggers the requirement to count both sides of the same sign as two signs instead of a single sign be granted; and 3) Variance to Section 24.04.221.1 to allow a corner sign to face a single street frontage instead of being angled to face both street frontages on property zoned “GC” General Commercial and “B” Multi-family Residential and legally described as follows:

Lots 1 and 2, Flaming Steer Addition, Wichita, Sedgwick County, Kansas and Lot 27 and the north 9 feet of Lot 29, Dieters Addition, Wichita Sedgwick County, Kansas. Generally located at the southeast corner of Kellogg and Main.

The variances are hereby GRANTED, subject to the following conditions:

1. A pole sign along the Kellogg frontage of the subject property shall be permitted that complies with all regulations of the Sign Code, except that variances are granted to permit the sign to be a maximum of 39 feet in height, to permit the separation of the sign faces up to a maximum of 7-feet 10-inches on the southern edge of the sign while allowing the square footage of the double-faced sign to be counted as a single sign face for the purpose of calculating the size of sign permitted, and to allow a corner sign to face only the Kellogg frontage instead of being angled to face both the Kellogg and Main frontages.
2. The pole sign permitted by the variances shall be the only ground-mounted sign permitted on the subject property.
3. Prior to the issuance of a sign permit, the applicant shall submit illustrations and a site plan showing the sign permitted by the variances for review and approval by the MAPD to ensure the conditions of the variances and the still applicable provisions of the Sign Code are met.
4. The applicant shall obtain all permits necessary to construct the sign, and the sign shall be erected within one year of the granting of the variances, unless such time period is extended by the Board.
5. The resolution authorizing the variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 23rd DAY of SEPTEMBER 2003.

RUANE: Item #3, Case No., BZA2003-37, request variance to increase the height of a billboard sign on property zoned “GI” General Industrial, Applicant, Mark and Caldonia McClellan, Agent, Kelly Smith and Sherm Smith, general location along the west side of I-135 and south of 21st Street North.

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KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER: BZA2003-00037
OWNER/APPLICANT: Mark and Caldonia McClellan
AGENT: EPS Media c/o Kelly Smith and Sherm Smith
REQUEST: Variance to Section 24.04.222.2 of the Sign Code to permit an increase in height for an existing off-site sign
CURRENT ZONING: "GI" General Industrial
SITE SIZE: 0.86 Acres
LOCATION: South of 21st Street North and west of I-135

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section 24.04.222.2 of the Sign Code to permit an increase in height for an existing off-site sign (billboard). The subject property is located south of 21st Street North and west of I-135. The subject property is zoned "GI" General Industrial and is used as a salvage yard.

The existing billboard is 30 feet in height; however, since the time the billboard was constructed, I-135 has been reconstructed and concrete barriers were added that obstruct the view of the billboard from northbound traffic on I-135. The applicant proposes to increase the height of the billboard by 10 feet so that it will be visible to northbound traffic on I-135.

The Sign Code permits a billboard to be 30 feet in height unless it is adjacent to an elevated section freeway. Billboards adjacent to elevated sections of a freeway are permitted to be a height such that the top of the sign is no more than 14 feet above the top of the freeway barrier. However, the subject property is not adjacent to the freeway, as intervening properties are located between the subject property and the freeway. Therefore, a variance is required to permit the 40-foot sign height requested. The applicant submitted the attached justification statements, site plan, and photographs to support the variance request.

ADJACENT ZONING AND LAND USE:

NORTH	"GI"	Vacant
SOUTH	"GI"	Vacant
EAST	"GI"	Construction sales and service
WEST	"GI"	Vacant

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as significant drainage features in the area provide significant open space that provides freeway visibility of a billboard located on property that is not adjacent to the freeway.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the immediate vicinity without any noticeable detrimental impacts on adjacent properties.

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HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the highway reconstruction created an obstructed view of the existing billboard and the investment in the billboard will be worthless if a variance is not granted to allow visibility of the sign from the freeway.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages, and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for permitted height.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the Sign Code makes provisions for increasing the height of billboard signs when they are adjacent to elevated portions of a freeway. Given the uniqueness of the subject property, the billboard is located on property that is not adjacent to, but is visible from, an elevated freeway; therefore, increasing the height of the billboard meets the spirit and intent of the Sign Code.

RECOMMENDATION: It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exists, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that the height of the off-site sign shall not exceed 40 feet.
2. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
3. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

SHERMAN SMITH, EPS MEDIA (Owner) of the billboard. In December 2001 we approached the landowner about putting in an off-site sign to rent on a small portion of the land. The traffic coming from the north was blocked when they raised the cement barrier, so what has happened large trucks can see the billboard over the barrier, and cars have lost all the view. We feel 10 feet will be adequate to correct the problem.

FOSTER This sign will be in the same location that it is in now? Do you see the sign from both sides, or just one sign towards the interstate?

SMITH It was constructed in a V pattern, to show both to the north and south bound traffic.

FOSTER MOVES GREENLEE SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT RESOLUTION BZA2003-00037.

MOTION CARRIES 7-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00037

WHEREAS, Mark and Caldonia McClellan, (owner/applicant) pursuant to Section 2.12.590.B, Code of

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the City of Wichita, requests a variance to Section 24.04.222.2 of the Unified Sign Code to permit an increase in height for an existing off-site sign property zoned "GI" General Industrial and legally described as follows:

Lots 52, 54, 56, 58, 60, 62, 64, 66, 68 and 70, on Cleveland Avenue, Harvey's Walnut Grove Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located south of 21st Street North and west of I-135.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 23, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as significant drainage features in the area provide significant open space that provides freeway visibility of a billboard located on property that is not adjacent to the freeway.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as numerous billboards are located in the immediate vicinity without any noticeable detrimental impacts on adjacent properties.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the highway reconstruction created an obstructed view of the existing billboard and the investment in the billboard will be worthless if a variance is not granted to allow visibility of the sign from the freeway.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages, and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for permitted height.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the Sign Code makes provisions for increasing the height of billboard signs when they are adjacent to elevated portions of a freeway. Given the uniqueness of the subject property, the billboard is located on property that is not adjacent to, but is visible from, an elevated freeway; therefore, increasing the height of the billboard meets the spirit and intent of the Sign Code.

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WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section 24.04.222.2 of the Sign Code be granted to permit an increase in height for an existing off-site sign on property zoned “GI” General Industrial and legally described as follows:

Lots 52, 54, 56, 58, 60, 62, 64, 66, 68 and 70, on Cleveland Avenue, Harvey's Walnut Grove Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located south of 21st Street North and west of I-135.

The variance is hereby GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that the height of the off-site sign shall not exceed 40 feet.
2. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
3. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 23rd DAY of SEPTEMBER 2003.

RUANE: Item # 4, Case No., BZA2003-43, request variances for Wesley Medical Center signage to increase the size of a building sign from 32 square feet to 190 square feet, to increase the height of a building sign from 30 feet to 37 feet, to increase the size of a ground-mounted sign along Central from 100 square feet to 144 square feet, and to increase the size of a ground-mounted sign along Rutan from 16 square feet to 65 square feet on property zoned “GO” General Office and “LC” Limited Commercial, Applicant, Wesley Medical Center, %Scott Hoepner, Agent, Trimark Signworks, %Jim Atherton, general location at the northeast corner of Central and Hillside.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER: BZA2003-00043
OWNER/APPLICANT: Wesley Medical Center c/o Scott Hoepner
AGENT: Trimark Signworks c/o Jim Atherton
REQUEST:

1. Variance to Section 24.04.193.3 of the Sign Code to increase the maximum area of a building sign from 32 square feet to 190 square feet each; and
2. Variance to Section 24.04.193.3 of the Sign Code to increase the maximum height of a building sign from 30 feet to 37 feet; and
3. Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 100 square feet to 144 square feet; and
4. Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 16 square feet to 65 square feet.

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CURRENT ZONING: “GO” General Office, “LC” Limited Commercial, & “B” Multi-Family
SITE SIZE: 4.25 Acres
LOCATION: Northeast corner of Central and Hillside (550 N. Hillside)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting four variances of the Sign Code to permit signage for a major addition to Wesley Medical Center located at the northeast corner of Central and Hillside. The first variance is to increase the maximum area of a building sign from 32 square feet to 190 square feet. The second variance is to increase the maximum height of the same building sign from 30 feet to 37 feet. The building sign is proposed to be located on the south elevation of the addition. The third variance is to increase the maximum area of a ground or pole sign from 100 square feet to 144 square feet. This ground or pole sign is proposed to be located at the northwest corner of Central and Rutan. The fourth variance is to increase the maximum area of a ground or pole sign from 16 square feet to 65 square feet. This ground sign is proposed to be located west of the intersection of Rutan and Edgemont. The applicant submitted the attached elevation renderings and site plan showing the design and location of the proposed signage.

The applicant submitted the attached letter describing the need for the variances and the manner in which the variances requested meet the five criteria for the granting of a variance. The applicant indicates that the size of building sign proposed is needed because the 32 square-foot building sign permitted by the Sign Code would be grossly inadequate and difficult to see on the 192,000 square-foot, 48-foot high building addition. The applicant indicates that the height of the proposed building sign is necessary due to the design of the building which contains windows that prevent the sign from being located other than between the third and fourth floors. The applicant indicates that the size of the medical center and the variety of services provided necessitates extensive directional signage to the extent that the size of ground or pole signs permitted by the sign code is insufficient to relay the necessary directional messages to patients and visitors.

ADJACENT ZONING AND LAND USE:

NORTH	“GO”	Medical Center
SOUTH	“PUD”	Retail, restaurant, hotel
EAST	“GO”	Office
WEST	“GC”	Restaurant

The five criteria necessary for approval apply to all variances requested.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the proposed signage is for one business providing a variety of services and located within a large medical center campus. Typically, a such a large campus would house numerous businesses, and each business would be allowed separate signage with the likely square footage of the signage exceeding the square footage of signage requested by the applicant.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only properties that will have a direct view of the signage are developed with non-residential uses.

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HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the Sign Code would permit signage in excess of the amount requested by the applicant were the large campus occupied by multiple businesses rather than a single medical center.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier to locate the facility and the services provided within the facility while balancing these identification needs with the needs for high-quality community aesthetics.

RECOMMENDATION: It is staff's opinion that the signage requested would be appropriate for identification of medical services on a large medical center campus. Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variances to increase the size and height of the signage be GRANTED, subject to the following conditions:

1. All signage on the subject property shall conform to the requirements of the Sign Code except that variances are granted to permit one building sign on the south elevation with a maximum area of 190 square and a maximum height of 37 feet; one ground or pole sign at the northwest corner of Central and Rutan with a maximum area of 144 square feet; and one ground or pole sign west of the intersection of Rutan and Edgemont with a maximum area of 65 square feet.
2. The signs permitted by the variances shall be placed in locations and be of a design that are in substantial conformance with the approved site plan and elevation renderings.
3. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE Regarding the impact on adjacent property, you say they are all non-residential properties, but what about the ones east of the property?

KNEBEL The residences that are east are oriented such that they face north and south. The proposed sign faces south. The residences that are south of Wesley Medical Center are oriented such that they face east and west.

RUANE They would have windows on the north.

PHILLIPS The hotel will block the view.

RUANE Where are the nearest residences on the east?

KNEBEL Two blocks east on Vassar.

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KEN HUTCHENRIDER, Chief operating office for Wesley Medical Center, We worked with the neighborhood when building the building and designing phase of Wesley.

FOSTER We have had several of these signs, about every time they restructure their building, and they have been considerate of the neighborhood.

FOSTER MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT RESOLUTION BZA2003-00043.

MOTION CARRIES 7-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00043

WHEREAS, Wesley Medical Center c/o Scott Hoepner, (owner/applicant), TriMark Signworks c/o Jim Atherton, (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests: 1) Variance to Section 24.04.193.3 of the Sign Code to increase the maximum area of a building sign from 32 square feet to 190 square feet; 2) Variance to Section 24.04.193.3 of the Sign Code to increase the maximum height of a building sign from 30 feet to 37 feet; 3) Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 100 square feet to 144 square feet; and 4) Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 16 square feet to 65 square feet on property zoned "GO" General Office, "LC" Limited Commercial and "B" Multi-family Residential and legally described as follows:

Lot 2, in Wesley Medical Center Second Addition, Wichita, Kansas, in Sedgwick County, Kansas. AND Lots 5, 6, 7, 8, 9 10 and 11, except the east 15 feet of Lot 11, on Central Avenue; together with the South Half of the vacated alley adjoining Lots 5, 6, 7, 8, 9, 10 and 11, except the east 15 feet thereof on the north; and the south 70 feet of Lots 44, 45, 46 and 47, except the east 15 feet of Lot 44, on Edgemont Place, together with the North Half of the vacated alley adjoining said lots on the south, all in Blazer's Addition, Sedgwick County, Kansas. Generally located on the northeast corner of Central and Hillside (550 N. Hillside).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of September 23, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the proposed signage is for one business providing a variety of services and located within a large medical center campus. Typically, a such a large campus would house numerous businesses, and each business would be allowed separate signage with the likely square footage of the signage exceeding the square footage of signage requested by the applicant.

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WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the only properties that will have a direct view of the signage are developed with non-residential uses.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the Sign Code would permit signage in excess of the amount requested by the applicant were the large campus occupied by multiple businesses rather than a single medical center.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale and has minimal lighting.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the signage will make it easier to locate the facility and the services provided within the facility while balancing these identification needs with the needs for high-quality community aesthetics.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that 1) Variance to Section 24.04.193.3 of the Sign Code to increase the maximum area of a building sign from 32 square feet to 190 square; 2) Variance to Section 24.04.193.3 of the Sign Code to increase the maximum height of a building sign from 30 feet to 37 feet; 3) Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 100 square feet to 144 square feet; and 4) Variance to Section 24.04.221.4 of the Sign Code to increase the maximum area of a ground or pole sign from 16 square feet to 65 square feet be granted on property zoned "GO" General Office, "LC" Limited Commercial and "B" Multi-family Residential and legally described as follows:

Lot 2, in Wesley Medical Center Second Addition, Wichita, Kansas, in Sedgwick County, Kansas. AND Lots 5, 6, 7, 8, 9 10 and 11, except the east 15 feet of Lot 11, on Central Avenue; together with the South Half of the vacated alley adjoining Lots 5, 6, 7, 8, 9, 10 and 11, except the east 15 feet thereof on the north; and the south 70 feet of Lots 44, 45, 46 and 47, except the east 15 feet of Lot 44, on Edgemont Place, together with the North Half of the vacated alley adjoining said lots on the south, all in Blazer's Addition, Sedgwick County, Kansas. Generally located on the northeast corner of Central and Hillside (550 N. Hillside).

The variances are hereby GRANTED, subject to the following conditions:

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1. All signage on the subject property shall conform to the requirements of the Sign Code except that variances are granted to permit one building sign on the south elevation with a maximum area of 190 square and a maximum height of 37 feet; one ground or pole sign at the northwest corner of Central and Rutan with a maximum area of 144 square feet; and one ground or pole sign west of the intersection of Rutan and Edgemont with a maximum area of 65 square feet.
2. The signs permitted by the variances shall be placed in locations and be of a design that are in substantial conformance with the approved site plan and elevation renderings.
3. The applicant shall obtain all permits necessary to construct the signage and the signage shall be erected within one year of the issuance of the sign permit, unless such time period is extended by the BZA.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 23rd DAY of SEPTEMBER 2003.

RUANE: Item 5, Case No., BZA2003-49, request variance to reduce the parking requirement from 44 spaces to 0 spaces for an expansion of the City housing office on 0.4 acres zoned "LI" Limited Industrial, Applicant, City of Wichita Housing Department, Agent, Mark Stanberry, general location north of 2nd Street North and east of Riverview.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER:	BZA2003-00049
OWNER/APPLICANT:	City of Wichita Housing Services Department c/o Mark Stanberry
REQUEST:	Variance to Section IV-A.4. of the Unified Zoning Code to reduce the parking requirement from 44 spaces to 0 spaces
CURRENT ZONING:	"LI" Limited Industrial
SITE SIZE:	0.4 acres
LOCATION:	North of 2 nd Street North and east of Riverview (332 N. Riverview)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The City of Wichita is requesting a variance of the Unified Zoning Code to reduce the parking requirement for the Housing Services Department office located north of 2nd Street North and east of Riverview at 332 N. Riverview. The applicant proposes an addition to the building (see attached site plans and aerial photograph) that will consume the land presently used for on-site parking; therefore, the applicant has requested a variance to reduce the parking requirement from 44 spaces to 0 spaces.

The applicant submitted the attached letter describing the need for the variance and the manner in which the variance requested meets the five criteria for the granting of a variance. The applicant indicates that the Housing Services Department has a need for additional office and storage space and that expanding the existing building has been determined to be the most feasible and economical method of providing the additional building space. The applicant also indicates that the City of Wichita has surplus parking spaces at the Rounds and Porter building located at 330 N. Waco, approximately one-half block northwest of the office building.

Section IV-A.10. the Unified Zoning Code permits required parking to be located off-site if certain conditions are met. The parking lot at the Rounds and Porter building does not meet two of the required conditions. First, the parking lot is located more than 600 feet, measured along the shortest legal, practical walking route, from the entrance of the office building. Second, the parking lot is located across an arterial street (Waco). Therefore, a variance is needed to allow off-site parking spaces.

Planning staff advised the applicant to seek a variance to reduce the parking requirement rather than variances of the 600-foot distance and location across an arterial street requirements. Planning staff advised the applicant to seek such a variance because the Rounds and Porter parking lot may not always have available parking to meet the parking needs of the Housing Services Department. Therefore, a variance to reduce the parking requirement is more flexible because a different off-site parking lot in the vicinity could be used in the future should the Rounds and Porter parking lot become unavailable in the future.

ADJACENT ZONING AND LAND USE:

NORTH	"LI"	Parking lot
SOUTH	"GC"	Parking lot
EAST	"LI"	Office
WEST	"GC"	Apartments

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is located in close proximity to the Central Business District, which does not require on-site parking, and in close proximity (but not as close as required by the Unified Zoning Code) to an off-site parking lot owned by the applicant containing sufficient parking spaces to meet the parking requirement of the subject property.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as sufficient parking spaces are available on property owned by the applicant within a reasonable walking distance of the subject property, so adjacent properties should not be negatively impacted by vehicles from the subject property illegally parking on adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulation will constitute an unnecessary hardship upon the applicant, inasmuch as the applicant would be required to entirely relocate their operations to a different property at a significant cost if the existing building cannot be expanded on the subject property by the granting of the variance to reduce the parking requirement.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the applicant provides tax-supported affordable housing services for which there is a community need that cannot be met in an economical manner unless the variance is granted.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Zoning Code inasmuch as the code provides for parking to be located off-site.

RECOMMENDATION: It is staff's opinion that the requested parking requirement reduction is appropriate if the applicant is required to provide the parking spaces off-site within a 1,000-foot radius

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of the subject property. Should the Board determine that conditions necessary to the granting of the variance exist, then it is the recommendation of the Secretary that the variance to reduce the parking requirement from 44 spaces to 0 spaces be GRANTED, subject to the following conditions:

1. A minimum of 44 parking spaces shall be provided off-site and must be located within a 1,000 foot radius of the subject property.
2. An "Agreement for Off-Site Parking" for the 44 off-site parking spaces shall be provided per the provisions of Section IV-A.10.d. of the Unified Zoning Code, even if the parking lot used to meet the off-site parking requirement is owned by the applicant.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

KNEBEL The question from the audience was what would happen if there were no parking available within this 1,000 foot radius. Then the applicant would not be in compliance with their variance. The way the variance is written, they are required to provide 44 spaces, somewhere off-site within that 1,000 foot radius, and they would have to be obligated to enter into an agreement whether it be with themselves, or with another private property owner to provided those parking spaces within that walking distance.

MARK STANBERRY City of Wichita Housing Services Department, The staff report pretty much covers the situation and our request. We are seeking to expand our building to have more room to house our current operation, and to centralize our operations, and I really have nothing further to add other than we are seeking approval to provide parking for the offices over at the Rounds and Porter location or the lot across the street next to the daycare center.

FOSTER How many staff people will be located at this building?

STANBERRY About 65 employees, and we are required to have 44 parking spaces based on the design of this building.

FOSTER So, basically the staff could use up all of the 44 spaces?

STANBERRY That is conceivable, provided they don't park on the street in front of the building in that area.

FOSTER I am concerned, because people may only be in your building about 5 minutes. Will you have drive-thru services? We are talking about basically no parking for the public if the staff has used the parking?

STANBERRY There will be parking there on-site. We do have the high-rise complex, the Greenway Manor, which is directly across the street, but typically that lot is only at half capacity. There are 71 spaces there. It is a high-rise that houses elderly and disabled citizens.

FOSTER Does it invite you to use it? Can the public legally use that to service your building?

STANBERRY I would suppose they could, because we own the high-rise and the parking lot at that site.

FOSTER Your service is related to a bank service. You are not there for long periods of time. More people are there for short periods of time. People are going to be 600 feet away, and it is raining, and

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they want to turn in the deed that you have required for the property, now how do you handle those things? Are you going to put up signs as to where they can go? Is there anyway that they can conveniently leave off documents?

STANBERRY We could utilize the Greenway Manor parking lot, the lot for the high-rise, which is normally at half capacity, and we are looking at, as far as external design requirements, creating a walkway that would invite people visiting the office to easily access the door to the office.

FOSTER They can't drive-up and leave something off?

STANBERRY It wouldn't be right at door side. It would be 40 to 50 feet away.

FOSTER You mean across the street?

STANBERRY No, within the parking lot on the same side of the street as our building, which is the parking lot also for the apartment high-rise that we own.

FOSTER That is 40 feet south?

STANBERRY Yes, that is 40 feet south. We do have some payment drop parking right up in front of the building in addition parking for disabled citizens that would be indicated to be handicapped parking.

FOSTER Is the staff presently allowed to parking in those spaces to the south now?

STANBERRY Yes.

FOSTER I have had trouble parking there. This is not a very big parking area for a building that size, with that number of employees. I am just wondering if there aren't signs or other things that you could do to make this convenient for the public.

STANBERRY We could look at that, and have our architect design something like that into the project, because we do want people to be able to access the building. We serve the public. We don't want them to come down and not have a place to park. We would be eliminating any employee parking in that lot that serves the high-rise that they currently utilize, so we would be eliminating that, and there should be sufficient space to park.

FOSTER Would you say that your services are related to a bank? You come in, stand in line, get your question answered, and you leave it in not a long period of time. More people are there for short period of times, and I don't know that they are going to want to walk 600 feet is my concern.

STANBERRY We wouldn't require those folks to walk 600 feet. We would have some capacity in the lot to the south where they could park, and have closer proximity to the buildings. It is only the employees that we would require to park in the location that is over 600 feet away.

PHILLIPS You have 65 employees, and we assume the majority of them drive. How many customers a day do you usually see?

STANBERRY The average visitors a day is about 40-50 people a day.

PHILLIPS What are your hours?

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STANBERRY We are open 8-5.

PHILLIPS How many spaces will you designate for visitors at any one time outside of the handicapped?

STANBERRY We would have the two spaces right by the front door, and then we would have parking space that is always available in the high-rise parking lot to the south.

PHILLIPS How many designated visitors parking spaces do you anticipate providing in that parking lot, in addition to the handicapped, as well as the two for the drop box?

STANBERRY We hadn't really designed a certain amount that we would have available there, but we could make them available.

PHILLIPS I think that is the concern from the Board that you are hearing. Mr. Foster's point is right that you take a situation that is already tight, not only on your site but in the area, and if you have 50 people there, and you are operating basically on an average 8-9 hours a day, you are looking at roughly 6-8 people an hour on the average, and the handicapped is not going to be utilized as much, and if you have two short term for payment drop, I think you need to be able to take care of these things.

STANBERRY I think we could provide as many as 10-15 spaces out there easily, because at any time during the day the parking lot, at least the occupancy of the parking lot to the south by the Greenway Manor tenants, is only at half occupancy, or just slightly above, so we could provide up to 10 spaces.

PHILLIPS Right, but you have to consider 65 people, and your employees are going to want to park as close to the building as possible, in addition to the visitors there, as well as Greenway Manor.

STANBERRY What we will do there, we will not be permitting employee parking at the site, that will be an internal department policy that the employees will have to park at the Rounds and Porter site, or secure their own parking elsewhere.

PHILLIPS If you can designate enough spaces in there, because it is hard to control those things when you don't own the parking lot, but if you have the ability to designate some visitors parking, because I don't know how long what the average stay is for your business.

STANBERRY It depends, it could be as little as 5 minutes, or it could be up to an hour.

PHILLIPS In that case, you probably do need something that would cover an hours worth of parking there.

STANBERRY I think we could do that, because the Housing Authority also owns the high-rise, and the parking lot and also the building that we are looking at expanding, so that is something we could easily do.

TONY UTTER, Commercial Real Estate Broker, I have been the property manager for the adjacent property on the north side of the existing City Housing office for several years. As of two-half months ago, I am now a tenant in the Allied Building, which is across the alley from the City Housing office. It might be more helpful for me to explain the concern for the owner of the Allied Building. This parking lot here is owned by the same owner of the Allied Office Building, which is right here. The concern that

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the owner has is that the parking that is currently available for the City Housing Office is not being reduced. It is being eliminated. Human nature being what it is that not only will City employees not want to park in the Rounds and Porter building but will park in our parking lot, which is private property.

Perhaps there would be another solution to this. It was not that long ago I was approached by representatives from the City they had wanted to purchase or lease part of the parking lot adjacent to the building, and there is more than enough parking there to service the Allied Building. The owner of the Allied Building would entertain either lease or purchase discussions. Those discussions did not go too far. I was authorized to submit an asking price, and we never received a formal response to that asking price, and there was some off the record very preliminary discussions. I believe that a parking plan for that building was submitted to utilize the area immediately adjacent to the existing City Housing office either by lease or purchase from the owner of the Allied Building. I was told somebody would get back with me when they were sure what they wanted me to present to the owner, and I did not hear anything back from them. I hadn't heard anything back from them until this notice was published. But again, the concern that the owner has is that his parking lot will be the sea of parking to be provided by visitors, guests to this building, and potentially by City employees as well.

RUANE How many parking spaces does Allied have that they could sell?

UTTER It included a row of parking of about 20 spaces, and a double row of parking about 30 there, about 50 parking stalls total.

FOSTER Do you feel it is possible to use those spaces at the high-rise that is being suggested?

UTTER I have some skepticism. My observation is that Greenway Manor is fairly used.

STANBERRY Currently the employees of Section 8 are on the bottom floor of the Greenway Manor high-rise. They will be moved over to this new location when completed.

FOSTER Does that leave any office workers in the high rise?

STANBERRY No, it does not. We would be turning the building back over to the tenants, and it will become common area space. We are serving tenants 50 years of age and above at the current time.

MIKE FREDRICK, BUILDING MANAGER for 325 RIVERVIEW, It is the seven story glass building right here. There are 40 visitors spaces and 290 reserved spaces. About two years ago every one of those spaces was reserved. Because of the nature of the professionals that work in that building they come and go a lot.

My concern now is Greenway Manor, Wichita Housing Authority, we are having people park in reserved spaces, and in the visitor spaces, and walking to Greenway Manor, and walking to Wichita Housing Authority, so in terms of trying to be a good neighbor I got slips of paper I put on their windshields of cars that are not suppose to be there. One of my concerns, was answered by a question that Mr. Foster asked. If you could have dedicated visitors parking spaces that would really relieve considerably, and the other issue is that there needs to be someway to effectively monitor the employee parking, either through license plate tags or someway to share with me who it is you are suppose to be responsible for their parking. The other concern I had brought up earlier is that as property sales in this neighborhood, and you have private parking lots that are fully utilized, where are they ultimately going

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to park? If the City no longer controls Rounds and Porter, or the building where the daycare center is, where are you going to find these parking spaces?

RUANE What would be the consequence if the City Housing Authority were to fall out of compliance with the conditions of this variance? Say they are granted this variance, they get their building permit, they build their facility out over what parking is required, and we pass what is suggested here, perhaps with the requirement that a certain number of spaces are required to be dedicated in the Greenway Manor lot, and those spaces are somehow taken away and they are out of compliance but what is the enforcement?

PHILLIPS If this motion becomes null and void in the future?

RUANE We pass the motion, the building is built, contingent upon alternative parking being supplied, some unforeseen event in the future that contingency that parking be supplied can't be met then what happens?

MILLER What would happen is that, if in fact they were not meeting the letter of the variance, they would be brought in, there would be an investigation, the Board would be asked to determine that they have violated the conditions of the variance, and if that was the case then the variance would be voided, and they would have to find other arrangements or be in violation, and then suffer whatever penalties are available.

RUANE What are the consequences? Tear down the building?

MOSHIER The ultimate consequence is to withdraw the Certificate of Occupancy, which allows the building to be used. I can tell you as a practical matter that is extraordinarily problematic. Even in aggravated situations, and the one I can think of is a situation that we have addressed in Old Town where there was a failure to pay into the system which maintained the parking requirements, I don't want to mislead the Board that is something that is going to happen. I am not aware that we have withdrawn a Certificate of Occupancy in a court proceeding for lack of parking.

SCHROEDER The first thing that might happen we would issue a citation.

FOSTER I would like to make an observation Mr. Chairman, I would hold a public agency to a higher standard than a private agency. This is a public agency, and parking should be made available. I think we are creating problems for the surrounding neighbors. I think they need a drive-thru window. These are low-income families that go here. I don't know how we can make a motion today. But if they want to come back and tell us, they can show us how they will park, and have a better plan.

SKELTON I agree with Mr. Foster. The applicant said he hasn't considered the visitor parking where are people going to park?

PHILLIPS I was ready to make a motion, but if the applicant wants to defer, we can do that too.

KNEBEL One thing Board has been discussing, you said something about designating Greenway Manor parking. This Board in a past variance has already designated that parking for Greenway Manor only for that building. I think perhaps what maybe needs to happen is, the applicant needs to re-file a new variance, and include the Greenway Manor parking area, and the subject property as an overall plan.

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STANBERRY We are in agreement to a deferral of this request.

KNEBEL The applicant is going to defer and change the application.

RUANE: Item #6, Case No., BZA2003-45, request Appeal of an administrative adjustment to a CUP dated June 27, 2003, which permitted a car wash on property zoned "LC" Limited Commercial for DP-104, Oak Cliff Estates Community Unit Plan, Appellant, J. Larry Fugate, Agent, Fleeson, Gooing, Coulson & Kitch, %Steve M. Stark, general location north of Maple and west of Maize.

TO: Members of the Wichita Board of Zoning Appeals,

THROUGH Scott Knebel, Assistant BZA Secretary

FROM: Sharon L. Dickgrafe, Assistant City Attorney

SUBJECT: BZA 2003-00045, Appeal of Administrative Adjustment to DP-104

DATE: September 12, 2003

At the September 23, 2003, regular meeting of the Wichita Board of Zoning Appeals, the Board will be asked to hear an appeal of an administrative adjustment made on June 27, 2003 by Dale Miller, Acting Director of Planning, and Kurt Schroeder, Superintendent of Central Inspection. The administrative adjustment was made at the request of Larry Bottenberg regarding property located at the northwest corner of Maize and Maple Road. The request was for an administrative adjustment to create a new parcel (Parcel 7) and allow a car wash on Parcel 7 as a permitted use. Additionally, the existing permitted use allowing a carwash on Parcel 6 was removed as a condition of granting the administrative adjustment.

Larry Fugate, owner of property located across Maize Road, 208 S. Maize Rd., Suite 2A, is appealing the administrative adjustment. The appellant submitted enclosed documentation outlining the reasons for the appeal.

An interpretation regarding this CUP was before the Board on appeal on October 22, 2002, in BZA2002-00061, regarding a request to build a movie theatre complex within the CUP.

AUTHORITY TO HEAR APPEAL AND STANDING

The authority of the Board of Zoning Appeals to hear appeals of Administrative Adjustments is set forth in Article V, Section F (1) of the Wichita-Sedgwick County Unified Zoning Code which states:

The Board of Zoning Appeals is authorized to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination by the administering or enforcing officer in administering or enforcing any provisions of this Code or any other development code, including but not limited to the Sign Code and the Landscape Code, wherein the appeal authority has been granted to the Board of Zoning Appeals.

An appeal may be filed to the Board of Zoning Appeals by any person aggrieved by any decision of any officer administering the provisions of the Zoning Code. Art. V, Sec. V-F of the Wichita-Sedgwick County Unified Zoning Code. The first determination that the Board needs to make is if the applicant has sufficient standing to bring the appeal. If the applicant is an aggrieved party, then he would have standing to appeal the administrative adjustment of the CUP.

CUP HISTORY AND PERMITTED USES

DP-104 was approved in 1982. Since 1982, a number of administrative adjustments have been made to the CUP. In 2002, an administrative adjustment was made to create Parcel 6, from original Parcel 2. The permitted uses for Parcel 2 included: "Shopping center, and associate tire, battery and accessory establishment, financial, office personal services, convenience and service orientated retail." In 2002, Parcel 6 was created by administrative adjustment, which permitted the same uses as Parcel 2, except that a car wash was allowed as a permitted use by the administrative adjustment.

Pursuant to the Zoning Code, car washes are first allowed as a permitted use in the Limited Commercial Zoning District. Car washes are also subject to additional regulations, pursuant to Art. III-D (6)(f) of Wichita-Sedgwick County Unified Zoning Code, which requires additional setback, fencing, paving, lighting, sign and screening requirements for car washes. When located within 200 feet of residential zoning, Art. III-D (6)(f) of Wichita-Sedgwick County Unified Zoning Code requires that an amendment of the CUP be obtained to permit a car wash if the subject property is located within 200 feet of residential zoning rather than an administrative adjustment. The subject property is located just over 200 feet from the nearest residentially-zoned properties to the north.

REVIEW STANDARDS

In determining if an administrative adjustment should be granted, Art. V. Sec. V-E.14 of the Wichita-Sedgwick County Unified Zoning Code provides:

Approved Community Unit Plans, whether approved before or after the effective date of this Code, may be adjusted by application of all owners within the parcel being adjusted. The Planning Director, with the concurrence of the Zoning Administrator, may approve minor adjustments to approved CUPs, unless finding that the proposed development would have one or more of the negative impacts stated in Sec. V-I.6, but in no event shall the Director approve an adjustment that allows any of the following:

- a. More than a five-foot or ten percent increase in building height, whichever is greater;
- b. More than a ten percent increase in floor area or building coverage or in residential unit density when calculated in a total, aggregate project bases;
- c. A change in use of a use that is more "intensive" (See Sec. II-B.6.i) than the use approved as part of the CUP.

In evaluating whether the administrative adjustment of the CUP was proper, Art. V, Section V-I-6 must be considered:

The Planning Director shall not approve a Zoning Adjustment if the Planning Director finds that the proposed development:

- a. Would adversely affect the safety and convenience of vehicular and pedestrian circulation in the vicinity of the subject tract, including traffic reasonably expected to be generated by the proposed use and other uses in the area given the existing zoning, existing land uses and proposed land uses in the area;
- b. Creates more adverse impacts on existing uses in surrounding areas than which reasonably might result from development of the site in strict compliance with the adjusted standard;

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- c. Would not be compatible with existing or permitted uses on abutting sites, in terms of adjusted building height, setbacks and open spaces, bulk and scale, landscaping, parking or circulation features;
- d. Will be determined to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity for reasons specifically articulated by the Planning Director.

Unlike variances, which come before the Board, neither state law nor the Wichita-Sedgwick County Unified Zoning Code set forth criteria or factors, which the Board can use to evaluate whether the Zoning Administrator's Administrative Adjustment was correct. Further, the factors set forth in determining if a variance is appropriate are generally not applicable in determining if a decision of the zoning administrator is reasonable.

The Wichita-Sedgwick County Unified Zoning Code does, however, provide the Board with some guidance. Article V, Section I-2 of the Wichita-Sedgwick County Unified Zoning Code sets forth the types of adjustments, which may be granted by the Planning Director. If the appellant were the applicant for the adjustment, the burden would be to show that all the criteria for the granting of the Adjustment have been met. See: Article V, Section I-6 of the Unified Zoning Code. In this case, however, the appellant is not the applicant, but a party aggrieved by the decision. The burden on such person is to show that the decision or adjustment is unreasonable based on the facts presented and the language of the zoning code, including the factors set forth in Art. V, Section V-I-6.

If the Board determines that the administrative adjustment was reasonable given the language contained in Article V, Section I-6, which authorize the granting of the adjustment, then adjustment should be affirmed. If the Board determines that the decision was unreasonable, given the language of in the zoning code, which authorizes the granting of the adjustment, then the Board should reverse the decision to grant the adjustment.

The Board should keep in mind that its authority in hearing this appeal allows it to reverse, affirm wholly or in part, or modify the decision. Finally, the Board should remember that the burden of proving that the decision was unreasonable is upon the appellant.

In rendering its decision, it is important for the Board to issue an order that summarizes the evidence and outlines the basis for its decision.

This memo outlines the standard of review for appeals cases. If the board members have any questions, I would be happy to provide any further clarification necessary. I have attached sample motions for your consideration, which affirm and reverse the decision.

RUANE I have a question, relative to the Burden of Proof issue. The unreasonable standard applies to whether or not the applicant has standing?

KNEBEL Doug, the question that they are asking is whether or not the Zoning Code has any guidance to them in determining whether or not the applicant is an aggrieved party that has standing to file the Appeal.

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MOSHIER I will give you my opinion. Let's say I live on the far east side of town. I think it would be tough for me to say that I am an aggrieved person. Now I am moving closer, and I live in the Delano area, and I think it is tough for me to say I am an aggrieved person or party. As you reach the intersection of Maple and Maize, I think it is pretty hard to say that people in that area who own property are not aggrieved, at least in the sense that is used as a basis for their right to come here and complain to you. Certainly when you are talking about aggrieved, you are making some assumptions that there is something that is wrong. With what is wrong, I don't mean to do that, but I think as people who have a right to complain, property owners within a distance of in this case. It has to be more than 200 feet, or you don't have to hear it. It goes somewhere else. But between 3-5 hundred feet, I think it is pretty hard to say those people are not aggrieved, in the sense that they are interested by this development, or they are interested in what happens in this development. My suggestion is that you pass over that, and consider the thing as if the appellant is an aggrieved person.

RUANE But we will need to make a finding that they appellant is an aggrieved party? Does anyone on the Board have questions or qualms about considering the appellant as an aggrieved party?

FOSTER No.

The Board finds unanimously that the appellant is an aggrieved party.

FLEESON, GOOING, COULSON AND KITCH, LLC, %STEVE STARK, What I would like to focus on first is a difference of opinion regarding the proper standard of review for the Board of Zoning Appeals in considering the appeal that is before you today. Scott's remarks indicated that he thinks this is a reasonableness standard. I got a copy at the end of last week, of blue colored memorandum from one of the City's Attorneys. I read that with interest, and frankly I disagree with that opinion. What Sharon Dickgrafe has borrowed from is the scope of review if a matter such as this is brought to court. What she has stated, generally speaking, is judicial scope of review, the reasonableness standard, that other bodies are accustomed to seeing when a rezoning matter appears before them.

This is an administrative body. This is an administrative hearing, and quite frankly, I think both the Kansas Statute defining the Board of Zoning Appeals authority and jurisdiction, KSA 12-759d, as well as the Unified Zoning Code, both provide the proper standard of review. I think the easiest way for me to paraphrase that is right out of the statute. These terms are also in the Zoning Code, but they are in a couple of different sections. KSA 12-759f – Appeals to the Board of Zoning Appeals – cutting to the chase the relevant language is, "The Board shall have the power to hear and decide Appeals where it is alleged there is an error in any order, requirement, or decision, or determination, made by the administrative official", and it goes on to say, "In exercising the forgoing powers the Board shall have all the powers of the officer of whom the Appeal is taken". What does that mean? Your job today is first to determine if there is an error committed by the two officials who signed the administrative adjustment letter, and in determining whether an error was committed, the Board has all the powers of the two individuals that signed that administrative adjustment letter. So what does that mean? That means your scope of review is the very same one that Central Inspection had and the Planning Director had when they reviewed the application.

Now, note nowhere in there are we talking about a reasonableness standard or the burden is on the appellant or the applicant. That is the court standard. What I am trying to help you with is your standard for this administrative hearing. I had a discussion along this line with Mr. Moshier, and I think he is prepared to advise the Board about what the true standard ought to be.

RUANE Steve, you say we have the same power that Kurt and Dale had, what was that standard?

STARK I think the proper standard that the two officials should have used depends upon whether this was a proper administrative adjustment. Now, quite frankly, in the abstract Ms. Dickgrafe's opinion is right. If there is a proper administrative adjustment before the two officials, then the standard she has quoted in V.I.6. is right. What did the two individuals do by the way when they signed this letter? I have looked at the administrative adjustment letter, and on the second page, second full paragraph, I think that defines the standard that they applied it is a mongrel to be honest with you, "On the basis of our review we feel that adjusting the C.U.P. in the manner you request will not have an adverse effect on the C.U.P. or on adjacent properties, nor will it be a substantial deviation from the original plan." Where is V.I.6.? That is the standard of review for a proper administrative adjustment. One, maybe two, of the factors out of V.I.6. are explicit in that paragraph that appears to define the standard of review, but where are the other factors? So, I would submit that what the two officials did was not even apply the technical criteria or standard of review that they should have applied.

Now, what should have happened, in my view, is predicated on whether you believe that the application was proper for C.U.P. administrative adjustment. I strongly urge you to not view it in that light, because this is not minor in affect. It is not minor in its operation. When someone goes about and changes a use to a more intensive use then that which is approved as part of the C.U.P, the C.U.P. administrative adjustment process expressly prohibits that use.

Scott's remarks as well as the administrative adjustment letter has skirted over this issue. The issue is not what the zoning is, the underlying zoning district for the ground that is applied for. If you look at the administrative adjustment criteria, the issue is whether the proposed use if more intensive then the uses approved for the C.U.P. Now, nowhere in that administrative adjustment letter will you see what those approved uses were for original Parcel 2. I will tell you what they are. Approved was a shopping center, an associated tire and battery and accessory establishments, financial, office, personal services, convenience and service orientated retail. Now the easiest way, I think, to try and determine this issue about whether there is more intensive use or not is to pick-up office. That is an easy one. Where does office fit in the hierarchy of least restrictive to more restrictive? I think that will clearly define what is being sought here. The car wash which first appears in the LC district is more intensive than office, so right off the bat this administrative adjustment could not be used to try and change the use to add a more intensive use on top of the C.U.P. uses for this ground. So it does beg the question when we talk about what is the proper standard of review. Is it fish or foul? What was before the officials? I would submit what they should have done is sent the developer packing and said get us a proper application instead of trying to squeeze this in as a C.U.P. administrative adjustment without notice or public input. Then we could have had a formal amendment to the C.U.P. and the developer could have tried to change the use to be more intensive and other things.

Let me focus on some of the other problems with the administrative adjustment letter that was issued. It reports, and Scott's presentation did not mention this, but it reports on its face to reduce the setback along Maize Road, presently 70 feet, down to 35 feet. I believe this a 50 percent reduction. In the close analogy context of a zoning adjustment, the most that one can do in terms of reducing front street zoning setback is 20 percent. You got to try a different technique if you are going to do more than 20 percent. Well here we have a 50 percent reduction signed off on an adjustment. You can't do it that way. Procedures do not let you do that.

I have already mentioned the change of permitted use to a more intensive use. A Conditional Use for a car wash, let's talk about that. What this application started off with, and I wish I had the parameters of the original Parcel 2 in front of you, what the applicant tried to do, if you could picture original Parcel 2 from where this proposed new Parcel 7 is carved out of the northerly boundary of original C.U.P. Parcel

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2 butts up along those residential homes that Scott was talking about just south of Texas. So what the applicant attempted to do was to take the remainder of original Parcel 2 that had already not been parceled out into other zoning lots, and in this letter this application asked Dale and Kurt to carve within the rest of Parcel 2 a new Parcel 7 which would be located more than 200 feet away from the residential properties, so they could avoid the Conditional Use requirement that is there in the Code for car washes. I submit that they might have been able to do it that way if they would have done it in two steps. If they first would have created a zoning lot, let's call it Parcel 7, and then seek their use for it, when they do it in the same stroke, what they have submitted is Parcel 2. They have submitted Parcel 2 including a chunk of property basically in the middle, and they are saying we are 200 feet away from the residences. No, they submitted Parcel 2 as the area they were going to put the car wash which butts up on residential properties which requires compliance with the Supplemental Use Regulations for car washes, a Conditional Use, so that short cut I don't think should be rewarded. Failure to comply with car wash Supplemental Use Regulation III.D.6.f.10. technically a circulation plan must be approved by a traffic engineer prior to filing of the application. The administrative adjustment letter acknowledges that the circulation plan fails to provide a minimum number of queuing spaces for the car wash bays and it blocks the traffic movements, but it was signed off anyway. Now that in and of itself should have been a big red flag. Circulation Plan must be approved by the Traffic Engineer prior to filing the application. So I think that is another minor point to be honest with you.

My client tells me that zoning signs were not posted. I would submit that the Board should reverse the Planning Director and the Zoning Administrator. This application and the decision is wrong for a number of reasons. If this car wash development is an appropriate development for that vacant ground, then let that come through the proper channels. Let it come through in a proper application and presume that would be a formal amendment to the C.U.P., perhaps a Conditional Use application, with published and mailed notice to individuals in the area. A public hearing before MAPC, protest rights and all of those other protections to safeguard the interest of the community around this area. Neighbors' rights, and specifically, Mr. Fugate's rights and interest, should be heard and protected but this is not the forum to bring up the adverse impacts and those neighbors' concerns. Send it to MAPC. That is the proper place.

RUANE Steve you mentioned that in order to create this new Lot 7 that they should have created a zoning lot. Do you mean that the C.U.P. itself should have been amended in order to create that lot?

STARK I am not sure the technical way to get that zoning lot created. Frankly, staff may tell you that in the past zoning lots may have been created through the administrative adjustment procedure. I don't know. I am just saying that when they try and combine all those things in the same proceeding, we have problems.

PHILLIPS Listening to all this, there is a lot to comprehend. The appeal here is to basically make this project go away, or are you trying to correct the process in which it was approved?

STARK The latter. Quite frankly, I wouldn't be here, and Mr. Fugate would not be here if he was conceptually in favor of the car wash. That much I think you could guess, but I think given the parameters that I believe the Board of Zoning Appeals can do in this proceeding, I think if you agree with the analysis or even some aspects of the analysis, the proper thing is to reverse and leave it up to the developer to decide what they are going to do.

PHILLIPS Is there an answer in there? My question was are you trying to make this project go away or are you trying to make this thing go through another process?

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STARK Both.

FOSTER Mr. Stark, what do you believe a building setback line is? Is it an easement?

STARK I would attempt to try to answer your question by having you define what type of setback you are talking about, platted, zoning?

FOSTER The 70 foot building setback line on a C.U.P.

STARK I don't believe it to be an easement. I think it is more of an administrative restriction.

FOSTER If you wanted to get it changed, how would you get it changed?

STARK I am not here to try and help the developer. What I am here saying is that what they tried legally is not available to them. The zoning adjustment process has a limitation. You can't go beyond a 20 percent differential and have that setback reduced more than 20 percent difference. How they go about doing that I guess I am not sure. I would assume that would also be an amendment to the C.U.P.

FOSTER There are some letters here that are against the idea of having a car wash here. Would you agree that the issue is not whether it is desirable to have a car wash here or not but an interpretation of what the wording is on the C.U.P.? In other words we are not the MAPC.

STARK That is not the primary issue. We go back to the proper standard of review. The proper standard of review, as Ms. Dickgrafe had outlined for the two officers was V.I-6., and under V.I.-6. adverse impacts on surrounding areas is relevant consideration, so in that context what the neighbors say about the car wash is relevant and can be taken into consideration. I don't want to make this the public hearing on the merits of the car wash, but I acknowledge those comments pertaining to V.I-6. criteria could be, and should have been, considered by the two officers. In my view what your standard of review is if you conclude this was a proper matter, a minor administrative adjustment, then you ought to look at those things in determining whether an error was made.

FOSTER In your point about the standard of review, is that the standard review from the State Statue, or is that in the zoning regulations?

STARK I think it is in both places.

PHILLIPS You spoke in the intensity of the allowable uses within the C.U.P. Define for me your interpretation or your definition of intensity.

STARK My definition probably isn't the one that ought to prevail. I think the one that is relevant is what the Zoning Code sets out, and there is a mechanism for defining what the intensity is.

PHILLIPS How do you interpret that then?

STARK I have to get the Code out and start walking through the sections.

PHILLIPS You are hanging a lot of your argument on the definition of intensity in relation to the permitted uses, so for the Board's purposes, I think I would like to see if maybe you can state that.

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STARK The first place that we would start would be in the administration adjustment Art. V. Sec. V-E. 14. for C.U.P. and at subpart c. the definition of intensity for this purposes we are referred back to Section II B.(6) of the Code, and by the way note what is referenced there, what we are going to contrast, is not the underlying use in the zoning district but rather the use approved as part of the C.U.P. We go to Art. II, Sec. II-B.(6) of the Zoning Code intensity at subpart I references to less restrictive or more restrictive district refer to the base zoning district established and represent a progression from the RR district as the most restrictive to the GI district as the less restrictive. The next paragraph talks about a related concept of intensity so we have restrictive in the first paragraph and intensity in the next paragraph. Intensity in this context references to less intensive, or more intensive uses, refers to the zoning districts which the uses are first permitted. Use X is to be construed as more intensive than use Y if use X is first permitted by right in a zoning district that is less restrictive then the district use Y is first permitted by right.

So to illustrate how I would walk through this, I focused on office as the simplest comparison. The C.U.P. Parcel 2 approved office for the use, so we would look in the Zoning Code for where office is first permitted by right and I think that is Neighborhood Retail or Neighborhood Office.

RUANE How much more intense is a car wash than an associated tire-battery and service center or convenience store?

PHILLIPS I look at intensive in terms or those relationships. I have read the Code and I know what I interpret it as. But from your client's prospective, there has to be something that he sees as a definition of intensity. You are talking about intensive uses here and it is not just rhetoric here. It has to do with lot coverage, pavement, density, occupants per square foot. What are we worried about here? How do they see this thing as being more intense then the other allowable uses?

STARK I think the technical application will get you to the end that I am submitting. So your question from a practical standpoint what is the issue of intensity? One of the issue of intensity is the 24-7 unmonitored, unsupervised, aspect of a car wash. You have got a property owner that has spent a lot of money on his office complex and on the two Parcels south of it that he is holding for investment for that office complex to basically be unsecured from the kind of 24-7 traffic that can be attracted to a lit car wash with no caretaker is a serious concern. The traffic input is another intensity issue. All of the traffic, as I understand the site plan, the car wash will empty and will both access and come out of the same opening on Maize Road across from his complex, so we will be negotiating that extra traffic. Those are probably the two more serious intensity issues from a practical standpoint.

DALE MILLER, planning staff, Let me start with the Code. If you will look on page 199 of the Unified Zoning Code. It specifically lists under Item 14 adjustments to C.U.P.'s, I won't read it but basically it lays out who has authority to make adjustments and under what circumstances. There are three that are listed, and they are the same three that are found in the memo at the bottom of page 2. So essentially one can consider as an administrative adjustment a request to change a C.U.P. as long as it doesn't violate those three conditions, and then you take a look at the other factors that were discussed about the zoning adjustment in V.I.6. The ones that determine whether or not there will be adverse impact on vehicular and pedestrian impact and if it impacts surrounding uses and so forth. So what I would submit to you is based on Item 14 on page 199 the Director of Planning and with the concurrence of the Zoning Administrator we have the ability to make adjustments to C.U.P.'s. To me that it straight forward, and it specifically says that in no event shall the Director approve an adjustment that allows any of the following, so when you look at what was the there, the request that was requested of us as an adjustment is not prohibited by those three factors there, so from that standpoint, it is staff's opinion that we have the ability to adjust a Community Unit Plan using these criteria.

Community Unit Plans are reviewed in total. They are seen as unified developments, and they have rules. This particular C.U.P. was originally created I think in 1982, and over the years there have been a number of adjustments, but as I recall and understand one of the early ones was the approval of the car wash there for the Amoco station. That then first interjected the use on the C.U.P. with a car wash. So that use was established by the adjustment to be allowed there, so then when subsequent request come in you don't just look at it the way that it was in 1982, you look at it the way that it is at the time that you are being asked to consider the adjustment. Otherwise you have zoning that is stuck. You can't make any changes, so when we review these requests for adjustments, we look at the way that they are at the time that they are asked not the way the original C.U.P. was approved. In this particular case, there had been a previous request that created the parcel immediately to the west of the corner parcel. As you know there is a car wash there today as a part of the Amoco operation and then prior to the request that you are considering today there was an adjustment that was approved for a car wash there that was never built. So in effect the way I personally reviewed this request was all we are doing is trading this location, where it had already been approved in the past, for this location here, and in fact, part of the adjustment that was granted said that if we do that then there could be no more car washes in there. So essentially we just moved it from one location to another location where it had been previously approved. The issue about whether or not that it is more intensive, the fact that this car wash was there long before this one, or the one that you are considering, in my opinion, that ends that argument. It is already there. It created the intensity that was necessary to allow for the adjustment to occur without increasing the existing intensity of the existing C.U.P. because it was already there.

In exhibit A the appellant indicated that we should be applying the Golden Rule. I have been in my current position as Current Plans Supervisor for 16 years, and we have never used the Golden Rules. Those have never been applicable on adjustments. Those are applicable for initial requests for new zoning and for amendments, but not adjustments because of the language on page 199 of the Unified Zoning Code. If, for example, this parcel had not been over 200 feet away, then we could not have done it as an adjustment. It would have had to be done as an amendment because of the criteria that it has to be over 200 feet away from residential use. It even met the criteria as a Conditional Use if you wanted to look at it that way in the terms of the distance requirements.

The issue about creating a new parcel before you make a change in the use. This community has been, again for the last 16 years and probably before that, we have simultaneously done these types of adjustments so that you create a new parcel and that you change the use at the same time. Again, the concept is that staff does not necessarily care how many parcels are in a C.U.P., what we are concerned with is the square footage that is allowed, and so what we have always done is as long as one maintains the square footage or does not exceed by those allowable percentage found on page 199, for example for if you wanted to increase a building height you can go up 10 percent or up to 5 feet whichever is greater by 10 percent you can increase the floor area or building coverage or the number of residential units, as long as you don't exceed that, you can do that as an adjustment. You can change a use as long as it is no more intensive and so in this case from staff's prospective whether it is 6 parcels or 7 parcels it doesn't really make any difference because the square footage is reallocated across those portions of the C.U.P. so that they remain neutral in terms of the totals that are allowed. We have consistently reduced the building setback line on these older C.U.P.'s. For whatever reason, these older C.U.P.'s seem to have a much greater setback than the more recent ones. In this case we are talking about 70 feet. There are a number of earlier ones that have 100 foot setbacks, and there has been a consistent pattern as development has occurred over the years for that setback to be reduced down to what is more traditionally seen in the last few years as a 35 foot minimum as being acceptable. There is a pattern of that. Creating these parcels there is literally hundreds of them that have been created on the various C.U.P.'s that are in existence today based on doing adjustments.

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I can't speak to whether the sign is up there. As part of the signage requirements in the application form there are instructions that tell the applicant that it is his responsibility to put a sign up, and it is supposed to be up there 10 days. The applicant is here, and we will let them speak to whether they put one up or not. There is an honor system on that arrangement, so staff can't tell you whether there was a sign there or not.

RUANE But such notice is required for an administrative adjustment to be made?

MILLER The instructions indicate that they are supposed to put up a sign for ten days.

MOSHIER But there is nothing in the Ordinance or the Code to require it.

MILLER It is just a courtesy thing.

SKELTON So there is not requirement for signage to be posted for 10 days.

MILLER Not in the Ordinance or the Code. It is stated in the instruction form.

SKELTON So it would be the City would like to see a sign for 10 days on the property. They would like to see it, but nothing else.

MILLER There is not an Ordinance or a regulation in the Code that requires that.

MARKHAM I think the applicant that applies for this, they are given a handout telling them to put the sign up for 10 days, right?

MILLER Yes, they do get the instruction sheets, and we even provide the signs if they want it. There are some companies that have their own signs and they put them up and there are others that buy them from us. Kurt Schroeder is here. Joe Lang is here as well. If they have comments, then I will stop at this point.

SKELTON My question is if it is not a legal requirement for a signage to be displayed why is it on the information that is given to the applicant.

MILLER Because as a courtesy we try and provide a notice to nearby property owners, and we do that as a courtesy thing.

SKELTON I see that it has caused some confusion here. My opinion is that we could do all kinds of things that would be nice, but if there is a legal requirement then I think it would be appropriate.

MILLER But there is not a legal requirement in this case.

SKELTON I know, therefore, I wouldn't think that we could suggest that to an applicant that they should put that there when it is not legally required.

MARKHAM Is there any other information mailed out to the neighbor's saying that this is going to happen?

MILLER Not as an adjustment.

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FOSTER Mr. Miller, as a C.U.P., does this document get recorded?

MILLER The document itself does not get recorded. We do have a statement that is recorded for the parcels that are affected so that someone buying property is notified as a part of the closing, or their due diligence, that they would be aware that a C.U.P. exists and that there are land use regulations that affect that piece of property.

FOSTER Is there a separate plat that goes with this or is this considered the plat?

MILLER No, there is a separate plat.

FOSTER Does the separate plat have the building setback line on it?

MILLER It is not required that they plat the building setback line. Some do. Some don't, but it is not a requirement that they do that.

FOSTER Did you take into account whether that was on the plat for this particular one?

MILLER Yes, we checked that out.

FOSTER Was there one there?

KNEBEL It is on the plat, and I think the adjustment required a vacation of that building setback.

MILLER Apparently it was.

FOSTER That is what I want to hear.

KNEBEL The plat does require a 70 foot building setback. A condition of that adjustment is to have that setback be vacated.

FOSTER Then the adjustment would have to be followed up by a formal vacation?

KNEBEL Right.

FOSTER That was what I was asking Mr. Stark. In my opinion a setback is a regular easement, access control, utility easement and so forth.

SKELTON Dale, I would like to speak on the point that Mr. Stark made about traffic circulation, and it is in the letter here and that it did not meet the approval of the Engineer. Has that been corrected here or does one of these drawings here depict it?

MILLER Not yet. It would be required is prior to building permit.

SKELTON So it really isn't an issue when it comes to an administrative adjustment?

MILLER We want to make sure that it is in process.

SKELTON Nothing that would stop or you wouldn't be able to deny it.

MILLER Correct.

SKELTON What you are saying regarding intensiveness is that since the corner gas station combination car wash already has a use that is already has intensity as a proposed car wash, then you are not bringing anything else in the area that would be more intensive?

MILLER That would be my opinion. That issue that parcel as an "LC" parcel unless specifically prohibited convenience stores, and other things, regular retail sales those parcels do not have any restrictions on being open 24 hours a day businesses can run themselves the way they want to be run. The C.U.P. does not prohibit them from being open 24 hours a day.

SKELTON Then the car wash would be allowed by right on that newly created parcel because it is over 200 feet and it is no more intensive then the current use?

MILLER You mean under straight zoning or per the adjustment?

SKELTON Per the adjustment.

MILLER Per the adjustment, it is allowed based on our opinion that there already was a car wash there so that upped the intensity to that level.

SKELTON And because it is over 200 feet you don't have to do the amendment.

MILLER Correct, if it had been closer, then we would have had to do an amendment.

SKELTON That was one of the appellant's arguments that it was within 200 feet, and obviously that is just a mistake then would you say?

MILLER The understanding that we have is that it is 202 feet.

FOSTER When you studied the intensity of this and looking at parcel 2 on the C.U.P., it lists, as you know, the shopping center and so forth, did you go back to 1982 when this C.U.P. was processed and study those uses in terms of what the intent was at that time? Or do you use the "LC" determination as it is today?

MILLER I use the way the C.U.P. is today with the adjustments that permitted all of things that are on there at the time of the application.

FOSTER Why wouldn't you go back and use the 1982 standards since that was within which this was adopted?

MILLER Again if we do that, then nothing is going to change. You have to look at what has transpired from the time it was approved until the time that you receive the application that you are considering at that point in time. I believe this particular C.U.P. had at least 4 prior administrative adjustments to it, and to me it would not be correct to not take those into account.

FOSTER This never went back before the MAPC for any revisions?

MILLER If they were all adjustments it would not have required MAPC review.

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JIM VOLK, VOLK VENTURE INC., 606 Stone Creek, Newton KS 67114, I am not an attorney ,so I am not going to be able to address any of the legal issues. I can address the common sense issues. I would like to build a state of the art \$800,000 car wash on Maize. The root of the issue is intensity. Thirty-thousand cars pass that corner daily. I would like to see 10 percent of them come in and visit my business monthly, 3,000 cars. Is that intense? I don't think so. I am getting a piece of what the Amoco station is getting in intensity when people fill up everyday. I think I am getting only a fraction of what that Amoco station is getting. Nobody is contesting the initial C.U.P. which provided for a car wash, and we are on a piece of property here that I don't understand a lot of the legal ramifications to what has been brought up. I do understand one thing. I believe that if Mr. Fugate truly had a problem as an appellant with this type of development in the area and in the C.U.P., then why did he tell my realtor and my zoning staff that he would not contest this development if it was on Maple, but if I continued to proceed and do this on Maize he would contest it and this thing would get tied up. If he was truly concerned about fast food trash blowing through my parking lot 24 hours a day, then why does he think it is okay on Maple to have trash blowing around but it is not on Maize. The only issue hear is that I want to develop the area and I want to spend my money on Maize, because I believe it is a major north/south arterial, and I believe I will get better exposure and better traffic, and I might be able to be successful. I don't think we are going to have teens congregating on my lot. It is going to be a well lit beautiful stucco building and if anybody is going to want to congregate somewhere they will congregate across the street where the lighting is not half as good. I guess in my opinion the burden of proof here is the fact that we are not developing the ground with a greater intensity. When everybody goes and gets a car wash, it is all at 9 a.m. on Saturday morning and it looks pretty intense, but at 3 p.m. on a Monday afternoon if there is anybody on my lot I would be grateful. So I think everybody has a misconception of the intensity of a car wash because they are all there at the same time. Either before church on Sunday or immediately after or on their only other day off during the week which is usually Saturday. Initially, I asked for a 35 foot setback which I believe is nothing greater than the Amoco station has on the corner. It is nothing greater than what I believe Mr. Fugate has on the other side of the street. I am just asking what is reasonable. I changed my plans buying more ground so I could stack more cars because that is what the City of Wichita wanted. They think I am going to have four or five cars in a row going into every single bay. I would be grateful for that, but I don't think it is going to happen. But I went ahead and spent more money buying more ground. I think it comes down to what the City of Wichita staff has said, and that is in their burden of proof. Does the property on Maize adversely effect safety and convenience of vehicular traffic, and the answer in my opinion is no. Will it have a negative impact on existing use in the surrounding area? No, I don't see how it could have a more intense or a negative impact, and will it have a negative impact on public health, safety or welfare, no. Is it compatible with existing or permitted uses on abutting property? I have a car wash at the Amoco station just south of me. How can it not be compatible? I would ask the Board of Zoning Appeals uphold the administrative adjustment on the property on Maize and permit me to develop this area as I see fit, not how Mr. Fugate thinks it should be developed. I think this vision of this development on how I would like to do it versus Mr. Fugate is at the heart of the problem here. I believe I purchased the land at a fair market value whereas Mr. Fugate in the recent past has purchased ground just a mile and half north roughly at 33 percent higher than what I purchased this at. So I believe there are many motives to why I am here today and why I am not washing cars.

PHILLIPS You are talking about this thing being unmanned. Is there any manager at all? You have to have some sort of maintenance on this thing. I go to car washes in the area. I go by that intersection twice a day, and there are two others mentioned in this report. Some are managed pretty well and some of them aren't. How do you intend to address that?

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VOLK Here is how I intend to address it. First of all 25 years in the military, I am not the type of person to just let thing fall apart. I don't micro-manage things, but at the same time I have my thumb on my business and I got \$800,000 at stake. Specifically, I will be there just about daily. My son just graduated from Bishop Carroll and he is off to college. My daughter and I live in Newton and I make the trip from Newton on a daily basis, and I intend for my daughter to go to Bishop Carroll. That is why I chose a west side location, because I believe my daughter will be going to Bishop Carroll.

PHILLIPS You have a structured schedule?

VOLK I will be down here daily because I will have to deliver my daughter to and from school on a daily basis. Even if I don't have to deliver her daily, I will be here, and if I am not here, I will hire someone else to spray down the area on a daily basis to make sure it is clean. Because you know what, nobody wants to go to a car wash that looks like it hasn't been maintained. People take pride in their vehicles, their homes, and they take pride where they shop and they take pride of where they go to a car wash, and I will not be associated, or neither will my name be associated with, something that is not right.

PHILLIPS So you will have daily maintenance?

VOLK Yes, if not by myself then by others.

PHILLIPS Are you just going to drive-thru and look at it or are you going to do something to it?

VOLK In terms of management and visitation I will be there on a daily basis. I will go into my wash bay. I will check to see what business was done the previous day. I will most likely empty, hopefully, in coinage and receipt and deposit them. I will check the lawn and if it needs cut I will do it or one of my children will do it, or I will hire it to be done. I will spray down all wash bays that need to be sprayed down, because nobody likes to step into three inches of mud when they get out of their Cadillac. I will empty the trash. I will do what needs to be done to keep this place well maintained.

PHILLIPS That is pretty vague term. I think people here are looking for something concrete. So if you can do what you say you are going to do, I think that is great. You are not the first one to come up here and say they will do what needs to be done. That is why I was asking for specifically and you said daily and you explained that.

VOLK If you knew me as a person, if you knew me like my banker knows me, when I say I am going to do something, I am going to do it.

PHILLIPS Unfortunately you have to look at what the Board's duty is today. It is to make an interpretation and we can't go back and look at the history of an individual on this thing. We have to look at what our job is as defined by the Unified Zoning Code and the rules and regulations. We have as a quasi-judicial board, we have to step back from that we can deal with, the facts presented like what Mr. Stark presented his issues, and yours as well. While we appreciate your enthusiasm, we have to deal with specifically the facts that we have in front of us so if you want to stick with the facts and help us with that, it is going to help us do our job.

VOLK The fact is I will be here daily.

KIM EDGINGTON AM Consulting, representing the property owner and I also submitted the original application for this adjustment. I will be very brief. I filed the application with the planning department

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on a Friday afternoon June 13th and posted a sign that evening. I was out running errands on the west side of town. It was probably anywhere between 5 and 7 p.m. I can't speak to what happened to that sign after that. I did not check on it daily. That is not uncommon that when we post these zoning signs we are not sure what happens to them, but just for your information there was a sign posted on site.

I would like to speak to the issue of intensity. Even if we go back to the original C.U.P. that was approved in 1982, the uses that were allowed such a convenience store, a tire-battery and accessory store, those are first permitted in Limited Commercial which according to the strict definition of the Unified Zoning Code would make them of equal intensity as a car wash, so I think that speaks directly to the issue of whether or not this use is more intensive than anything else that is currently, or even in the past, allowed. If you look at our current situation we most definitely are of equal intensity with an existing car wash. There is no distinction made per the Zoning Code whether the car wash is a single-bay, a double-bay. A car wash is a car wash, and there is an existing car wash within the confines of this C.U.P. Taking that a step back even further, if we look at the intensity of uses that were allowed at the initial approval of the C.U.P., those items are of equal intensity as a car wash. So we feel the Zoning Administrator and the Planning Director were reasonable in making that decision and they used the review criteria that is set forth in the Zoning Code, and made an appropriate decision, and we would ask that you would review that and find the same, that was a reasonable and justified decision, and that they followed the appropriate review criteria and came to an appropriate conclusion.

PHILLIPS Did you retrieve the sign?

EDGINGTON When I went back approximately 2 weeks later the sign was gone. I found one piece of wood that it was attached to.

RUANE How many signs did you put up?

EDGINGTON We were required to put up one sign along Maize Road for that property. I use two piece of wood lath, and it was stapled between the two pieces, and I found the partial remains of one wood lath.

FOSTER Point out other shopping centers that have car washes in the C.U.P. that are not part of service stations?

EDGINGTON Well shopping center was not the only use allowed by the original C.U.P. There was a list of several uses, and shopping center being. One convenience stores, tire-battery and accessory store, so those are uses that are of similar intensity as the car wash.

RUANE Bickley, will you please repeat your question.

FOSTER Can you point out shopping centers that have this type of car wash in them?

EDGINGTON Well there are car washes located adjacent to a nearby strip shopping centers all over town. West Maple for example.

FOSTER I agree with you strip centers, but when we think of a shopping center this is what that was designed to be wasn't it?

EDGINGTON That was only one of the proposed uses for this property.

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FOSTER Wouldn't you call this C.U.P. for a shopping center? This was not strip commercial was it?

EDGINGTON Well there was shopping center was one of the proposed uses. When the C.U.P. was adopted I don't know that there was an intended use but there was a number of uses that were proposed for that.

FOSTER Would you agree that Parcel 2 and Parcel 3 are the largest parcels on this C.U.P. that are commercial and both of them indicate that they are shopping centers. Do we have any other history in the City of using shopping centers.

EDGINGTON There is a litany of commercial centers that are lined with out parcels which this is an out parcel, and was originally platted as an out parcel, that have car washes and convenience oriented retail for instance dry cleaners, fast food, convenience stores that are located on those out parcels in front of a larger commercial area. It is not unusual at all.

RUANE Can you give me an example of that?

EDGINGTON Central and Rock Road has a car wash there, Cmart.

RUANE Can you site me an example of a five bay, you wash it put in quarters?

EDGINGTON There is one being built at 21st and Maize in front of NewMarket Square on the northwest corner.

RUANE And how was that parcel referred to in the C.U.P.?

EDGINGTON That is not a project of mine.

KNEBEL That property is not in a C.U.P.

EDGINGTON There is also one being built at Kellogg and Greenwich. There is a car wash at the southwest corner. That property that is in front of a larger commercial retail area.

STARK I want to address a couple of points that Mr. Miller brought up. On the question of intensity, I need to try and have you understand that the car wash use that Dale was referring to empties its traffic on Maple. I want to tie that into the developers comment about Mr. Fugate talking to a realtor about we wouldn't contest a proposed car wash if it was located at that Parcel 6. That also ties in with the heightened concern which Mr. Fugate has if this proposed car wash comes in across from his building. The other point I want to bring up on the intensity question to be sure Parcel 6 came in on a similar kind of C.U.P. administrative adjustment where that car wash use was proposed and apparently approved administratively for that Parcel 6 which is right here. I disagree with Mr. Miller in the concept of just trading locations. It is not that simple, because what the applicant has to do he has to apply for what is now new Parcel 7 and ask for a use there. I don't see anything in the administrative adjustment process that talks about exchanging or swapping uses. The intense use of a car wash was approved for Parcel 6 not for this ground here, which we contend was proposed under this administrative adjustment. They had to carve Parcel 7 out of some ground. Parcel 7 as a zoning lot did not exist at the time that the application was submitted. So what we look at is the intense, the uses, per the C.U.P. on the ground covered by the application. Parcel 6 is out of the equation. Parcel 6 already had the car wash on it. What is left over for comparison on intensity is what uses per the original C.U.P. where on the ground covered. I don't think that it is a matter that you can simply swap locations and say we will take the use

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off this one and we will stick it up there. I don't think that is a proper device for the administrative adjustment. Those are the two points that I wanted to mention, and finally in response to Kim's point about, a car wash is a car wash, yes the Amoco service station on the corner of Maple and Maize has a one bay car wash, but that is our point. That is a manned supervised proprietor. There are employees there, and they will guard against vagabonds and that type of thing.

ROGERS Is the Amoco opened 24 hours a day?

KNEBEL I don't know.

RUANE The way I have been taught is that the whole purpose for the C.U.P. is for adjacent property owners or perhaps one property owner to join parcels together for private zoning. Essentially, it has almost a weighted average density in the substitution of another use over here and swap for a use over here with the same C.U.P. is rather common. Is that correct?

MILLER Very common.

RUANE As long as the overall zoning intensity of the entire C.U.P. is not greatly increased by the swapping out of one parcel to the other that is considered a minor adjustment?

MILLER As long as you are not adding a use that is more intense than what is already there.

FOSTER Did you have reason to go back and look at the other administrative adjustments that approved the early car wash?

MILLER Not in detail. Kurt may have looked at them but I didn't.

FOSTER Did you take into account that it did have a staffed operation with it so to speak? The Amoco station is a staffed operation, right?

MILLER Correct. It is a convenience store, Amoco, is what I would call it. There would be someone in the convenience store I assume.

FOSTER In other words there was another one beyond that right that never got built?

MILLER The initial one off the corner, right. That never got built.

FOSTER Was that a self-service, so to speak, or did it involve a manned operation?

MILLER That was self-service. I didn't do that one, but Scott tells me that it was a self-service car wash.

FOSTER So what they are applying for now is the same thing?

MILLER Yes.

FOSTER In regard to a setback being a vacation, would a person follow through after a decision like this and ask for a vacation of that easement from 70 feet to 35 feet?

MILLER Correct, they wouldn't get a building permit until that vacation was completed.

FOSTER So the process has not been completed yet?

MILLER Apparently not.

FOSTER One of the benefits of having the BZA do things like this is to learn things and explore things that ought to be fed back into the system. These are glitches. These are things that give you an opportunity to look at the regulations and study them to see if they are working. The thing that does bother me that people are given a specific notification when these C.U.P.'s are put out. When they are heard in 1982, people, at least within 200 feet maybe a 1000 feet, were notified and had an opportunity to be heard, and this is what resulted. You mentioned this as sort of private zoning in a way, and in many circles, this is known as zero zoning, meaning it is not suppose to change. People look upon it like that. Wichita over the years has created an adjustment system and others that has changed that picture of what people might have an image of. They leave a hearing and say good that is going to be so and so, and yet they are never notified again that changes might take place, so I would hope that this hearing might feed back the idea that maybe some notification is needed to people when such changes are made that can have some intensity changes on their operation. I also am again hampered or limited by the fact that I go back to 1982. This is when it was approved, and this is what people observed. What it is now. I don't believe, Mr. Miller, did you go through the zoning adjustment criteria on 205 in other words that is your standard right to interpret intensity right, on page 205, and 206 at the bottom?

MILLER No, that is for a zoning adjustment.

FOSTER That is not this then, see I am reading this as we are on page 199 and it makes reference to V-I.6. right, and I went to 205 and 6a. There would I presume that is the criteria for determining the intensity?

MILLER Yes, on 6 I thought you said 204 and 205.

FOSTER I am looking at the bottom of page 205 6a, 6b, 6c etc. that is what you use to determine intensity?

MILLER Yes, I thought you were talking about 2a through m that lapses over on 205.

FOSTER I just want to make sure that the Board realizes that these a, b, c, this is the criteria. In other words, Mr. Stark talked about two different things. One is that there is a state statute and it is contained in these regulations as a standard of review which has to do with reviewing it as the reviewing officer looked at it, and then we go to the second thing which the reviewing officer looked at, and that is 6a, 6b, 6c, and 6d, and so there are two standards. One is determining a, b, c, d, and the other is you are to determine whether he went through that process, and that is what I was finding because I thought it was 1 instead of I.

KURT SCHROEDER, ZONING ADMINISTRATOR, These are the Items that I almost got up to speak about were a, b, c, d. Of these things and from a historical perspective, I had quite a bit of opportunity to study this C.U.P. in the previous 7 – 8 months to this request. As you might recall, this is where the theatre complex was proposed to go, so indeed I was looking at a lot of activity.

RUANE I am going to cut you off. Are we looking at the appropriate criteria, if we are looking at a, b, c, and d?

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SCHROEDER I am just trying to tell you. He asked if there was a historical perspective, and yes there was and there was a lot of that research done. As you read through (a) on page 205 including traffic reasonably expected to be generated by the proposed use and other uses in the area given the existing zoning, existing land uses, and proposed land uses in the area. As you can see Parcel 2 allows 69,000 plus square feet of shopping center and all those other uses could be a convenience store. It could be a 8,000 square foot convenience store on this particular Parcel 7, and I will submit to you that we have done those numbers before, and there is a lot more traffic generated from that kind of use than there would be from a car wash. The next was (b) creates more adverse impacts on existing...

RUANE Kurt you realize I am going to have to give Steve time for rebuttal.

MILLER I had four minutes left on my 15 minutes that never got used because Kurt was ready to get up when the other gentlemen got up and we ate that time up using the other gentlemen's testimony.

SCHROEDER I will stop. I was trying to reply to his specific questions about a, b, c, and d.

RUANE Bickley, did you get your answer?

FOSTER Yes, he is saying that these were part of the criteria that were used.

SCHROEDER I was trying to explain why and what was considered.

RUANE I understand. I thought you were trying to clarify which sections of the Code we should be looking at.

SCHROEDER No, I was trying to answer a, b, c, and d.

STARK Mr. Foster is right on it. Is this a minor adjustment? Is this a proper zoning technique to accomplish what that are looking for and did the administrative officers apply and look at all of the relevant criteria? One of the points in passing about the security, Mr. Fugate's office has been broken into three times within the last 6 months, and you can appreciate that he has a heightened concerned about the security in this area.

FOSTER Mr. Chairman you recall that I had some concerns about the use of this material on the same site at an earlier time. I was a minority vote you recall 4-1. I stand by that particular vote in regard to that particular case, and that case is still in court as I understand it. In regard to looking at this one, though, I would look at it differently. I think staff has presented a very good presentation in showing and leading us through the theories that it went through to determine that they have the right to make this kind of adjustment, and they have shown us where they have the right to do that. Mr. Miller and Mr. Schroeder have indicated where the standards are that create the adjustment criteria in terms of intensity and so forth, and we know where that is. I do not agree on the underlying thing. I think people ought to have greater assurances back in 1982 when this started. I think that notification should be given to people. These are major changes as I see it, and people ought to be given an opportunity to be heard on it, but we have to look at it as they looked at what I am getting at, not how I look at it, but how did they look at it? If we looked at it the same way they did, would we reach the same conclusion? I think the thing that we have to take into account is that car washes are popping up everywhere, and this is something that is changing, and Mr. Miller has pointed out that this was set up to provide for change and innovation and so forth, and car washes are occurring all over, and some of them, a few of them, are going into shopping centers. They certainly go into strip commercial and all that. They are what we do today. I think Mr. Phillips is right, and we have agreed now on two things today, Mr. Phillips, and we

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are each scared of that, but the point is that he has pointed out that this area allows 24 convenience stores. I mean when these were not looked upon as a 24 hour thing today it is, today it is, in other words convenience stores are personal services. The services oriented retail and so forth. They could move a WalMart in there a 24 hour service, and so if you look at it like they are talking about it, then I would have to agree with the staff that it is possible to increase the intensity of this and allow a car wash.

MOSHIER I would like to suggested that you add to what Ms. Dickgrafe has provided an additional finding that your evaluation of this appeal results in your finding that there was no error committed by the officials in evaluating or processing this specific administrative adjustment. I did not respond to what Mr. Stark said earlier. I generally agreed with him about his concept about of the standard of review here, except what I didn't agree with is that the issue that has been before the board, and the board has done pretty well on focusing on that, is whether Mr. Miller or Mr. Schroeder made an error in their processing and their evaluation, and I think from what I have heard the Board has concluded that they made no such errors, and that is the appeal that the appellant had brought to you today, so I think if you will add that in addition to the statements, that you could certainly adopt by reference what Ms. Dickgrafe has provided for you. That would be sufficient.

FOSTER MOVES SKELTON seconds, to affirm the administrative adjustment.

Motion CARRIES 7-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00045

HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, THE BOARD MAKES THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section 2.12.590 of the Code of the City of Wichita Kansas;

2. That the Board makes the following findings of fact:

a) That pursuant to Article V, Sec.V-E(14) of the Wichita-Sedgwick County Zoning Code, the authority existed to grant the administrative adjustment made on June 27, 2003.

b) That the requirements for granting an administrative adjustment, pursuant to Art. V-I-6 have been met.

i) Impact on Safety and Convenience of Vehicular and Pedestrian Circulation: The creation of Parcel 7, with the permitted use of a car wash would have no impact on safety and convenience of vehicular and pedestrian circulation in the vicinity of the property, as a car wash is currently allowed in the CUP because of the Administrative Adjustment in 2002.

ii) Impact on existing uses in surrounding areas: There will be no impact to the surrounding area because the conditions in Art. II, Sec. III-D(6)(f) provide adequate screening, fencing and lighting requirements to adequately protect surrounding residential properties.

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- iii) **Compatibility with existing or permitted uses on abutting sites:** The addition of the permitted use of a car wash on parcel 7 is compatible with the existing commercial uses already established in the CUP, and does not create a significant change in the permitted uses for the CUP.
- iv) **Effect on public health, safety or welfare:** There will be no negative impact on the public health, safety or welfare nor will properties or improvements in the vicinity be materially injured.
- c) **The administrative adjustment is supported by the language contained in Wichita-Sedgwick County Unified Zoning Code.**

3. The Board further finds that the administrative adjustment as set forth in the letter of June 27, 2003 was reasonable and is supported by the evidence presented at this hearing.

4. The Board further finds that the appellant has not met his burden of proof to show that the administrative adjustment was in error.

5. The Board further finds no error in the process utilized by the staff.

THEREFORE, BASED UPON THE FOREGOING, THE BOARD RESOLVES THAT THE ADMINISTRATIVE ADJUSTMENT HEREIN BE AFFIRMED.

FOSTER As follow up, I would like to request the staff to study the possibility of providing notice to adjacent property owners, and that can be selective. It doesn't have to be the whole shopping center. It can be within 200 feet of the selected site as to whether that would be a fair addition to the adjustment process.

SKELTON There needs to be a set policy, not a if you will type thing on the notification and putting the sign up.

MARKHAM Written notification, they used to do that, they would mail out an announcement to each of the surrounding property owners.

FOSTER For an amendment of a C.U.P., a written notice is sent to everybody around it right Mr. Miller?

MILLER If it was handled as an amendment, we would have to notify everyone within the C.U.P. and then we would use the initial distance that was used when the C.U.P. was originally created, and it would go around that parcel or parcels that were effected.

FOSTER Just to make sure my point is made, we are talking about this as an adjustment not an amendment to the whole thing, and therefore it would be possible to have a smaller area, but still and never the less notifying neighbors in that area and putting up a sign.

RUANE The cell tower item will be tabled for next month or whenever it is convenient for those who wish to address us on that item.

Meeting adjourned at 4:53 p.m.